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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Case No. 08-01789-brl

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In the Matter of:
SECURITIES INVESTOR PROTECTION CORPORATION,

v.

BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, et al.,
Defendant.

- - - - -x

United States Bankruptcy Court
One Bowling Green
Courtroom 623 (BRL)
New York, NY 10004-1408

March 15, 2012
10:00 AM

B E F O R E:

HON. BURTON R. LIFLAND

U.S. BANKRUPTCY JUDGE

1 (cc-4678) Windels Marx Lane & Mittendorf, LLP's Seventh
2 Application for Interim Professional Compensation for Services
3 Rendered and Reimbursement of Actual and Necessary Expenses
4 Incurred from June 1, 2011 through September 30, 2011 for
5 Windels Marx Lane & Mittendorf, LLP, Special Counsel, period:
6 6/1/2011 to 9/30/2011, fee: \$2,951,809.50, expenses:
7 \$31,137.86.

8
9 (cc-4676) Baker & Hostetler LLP's Eight Application of Trustee
10 and for Allowance of Interim Compensation for Services Rendered
11 and Reimbursement of Actual and Necessary Expenses Incurred
12 from June 1, 2011 through September 30, 2011 for Baker &
13 Hostetler, LLP, Trustee's Attorney, period: 6/1/2011 to
14 9/30/2011, fee: \$47,967,371.55, expenses: \$1,245,333.46.

15
16 (4682) SCA Creque as Special Counsel to the Trustee Application
17 for Allowance of Interim Compensation for Services Rendered and
18 Reimbursement of Actual and Necessary Expenses Incurred from
19 June 1, 2011 to September 30, 2011 for SCA Creque, Special
20 Counsel, period: 6/1/2011 to 9/30/2011, fee: \$70,919.59,
21 expenses: \$1,084.80.

22
23 (4679) Taylor Wessing as Special Counsel to the Trustee
24 Application for Allowance of Interim Compensation for Services
25 Rendered and Reimbursement of Actual and Necessary Expenses

1 Incurred from June 1, 2011 through September 30, 2011 for
2 Taylor Wessing, Special Counsel, period: 6/1/2011 to 9/30/2011,
3 fee: \$1,476,052.11, expenses: \$162,162.33.
4
5 (4680) UGGC & Associates as Special Counsel to the Trustee
6 Application for Allowance of Interim Compensation for Services
7 Rendered and Reimbursement of Actual and Necessary Expenses
8 Incurred from June 1, 2011 through September 30, 2011 for UGGC
9 & Associates, Special Counsel, period: 6/1/2011 to 9/30/2011,
10 fee: \$18,297.83, expenses: \$206.75.
11
12 (4681) Graf & Pitkowitz Rechtsanwälte GmbH as Special Counsel
13 to the Trustee Application for Allowance of Interim
14 Compensation for Services Rendered and Reimbursement of Actual
15 and Necessary Expenses Incurred from June 1, 2011 through
16 September 30, 2011 for Graf & Pitkowitz Rechtsanwälte GmbH,
17 Special Counsel, period: 6/1/2011 to 9/30/2011, fee:
18 \$600,076.69, expenses: \$44,587.04.
19
20 (4683) Attias & Levy as Special Counsel to the Trustee
21 Application for Allowance of Interim Compensation for Services
22 Rendered and Reimbursement of Actual and Necessary Expenses
23 Incurred from February 1, 2011 through September 30, 2011 for
24 Attias & Levy, Special Counsel, period: 2/1/2011 to 9/30/2011,
25 fee: \$281,455.26, expenses: \$23,263.85.

(4686) Higgs & Johnson (formerly Higgs Johnson Truman Bodden & Co.) as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from June 1, 2011 through September 30, 2011 for Higgs & Johnson (formerly Higgs Johnson Truman Bodden & Co.), Special Counsel, period: 6/1/2011 to 9/30/2011, fee: \$82,541.25, expenses: \$6,607.19.

(4692) Greenfield Stein & Senior, LLP as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from April 20, 2011 through September 30, 2011 for Greenfield Stein & Senior, LLP, Special Counsel, period: 4/20/2011 to 9/30/2011, fee: \$8,248.05, expenses: \$0.

(4684) Eugene F. Collins as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from June 1, 2011 through September 30, 2011 for Eugene F. Collins, Special Counsel, period: 6/1/2011 to 9/30/2011, fee: \$1,550.86, expenses: \$217.99.

(4685) Schiltz & Schiltz as Special Counsel to the Trustee

1 Application for Allowance of Interim Compensation for Services
2 Rendered and Reimbursement of Actual and Necessary Expenses
3 Incurred from June 1, 2011 through September 30, 2011 for
4 Schiltz & Schiltz, Special Counsel, period: 6/1/2011 to
5 9/30/2011, fee: \$8,378.96, expenses: \$544.63.

6
7 (4687) Kugler Kandestin, LLP as Special Counsel to the Trustee
8 Application for Allowance of Interim Compensation for Services
9 Rendered and Reimbursement of Actual and Necessary Expenses
10 Incurred from June 1, 2011 through September 30, 2011 for
11 Kugler Kandestin, LLP, Special Counsel, period: 6/1/2011 to
12 9/30/2011, fee: \$1,748.85, expenses: \$0.

13
14 (4688) Young Conaway Stargatt & Taylor LLP as Special Counsel
15 to the Trustee Application for Allowance of Interim
16 Compensation for Services Rendered and Reimbursement of Actual
17 and Necessary Expenses Incurred from June 1, 2011 through
18 September 30, 2011 for Young Conaway Stargatt & Taylor LLP,
19 Special Counsel, period: 6/1/2011 to 9/30/2011, fee:
20 \$19,995.30, expenses: \$425.35.

21
22 (4689) Williams, Barristers & Attorneys as Special Counsel to
23 the Trustee Application for Allowance of Interim Compensation
24 for Services Rendered and Reimbursement of Actual and Necessary
25 Expenses Incurred from June 1, 2011 through September 30, 2011

1 for Williams, Barristers & Attorneys, Special Counsel, period:
2 6/1/2011 to 9/30/2011, fee: \$72,659.58, expenses: \$950.00.

3
4 (4690) Werder Vigano as Special Counsel to the Trustee
5 Application for Allowance of Interim Compensation for Services
6 Rendered and Reimbursement of Actual and Necessary Expenses
7 Incurred from June 1, 2011 through September 30, 2011 for
8 Werder Vigano, Special Counsel, period: 6/1/2011 to 9/30/2011,
9 fee: \$20,860.41, expenses: \$53.57.

10
11 (4691) Mishcon de Reya as Special Counsel to the Trustee
12 Application for Allowance of Interim Compensation for Services
13 Rendered and Reimbursement of Actual and Necessary Expenses
14 Incurred from June 1, 2010 through October 26, 2010 as well as
15 Reimbursement of Fees Previously Held by SIPC for Mishcon de
16 Reya, Special Counsel, period: 6/1/2010 to 10/26/2010, fee:
17 \$1,743,752.47, expenses: \$139,765.97

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25 Transcribed by: Anna Maria Leon

1 A P P E A R A N C E S :

2 BAKER HOSTETLER LLP

3 Trustees for Bernard L. Madoff Investment Securities, LLC

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: DAVID J. SHEEHAN, ESQ.

8 IRVING H. PICARD, ESQ.

9

10

11 SECURITIES INVESTOR PROTECTION CORPORATION

12 Counsel for Dispute Resolution

13 805 15th Street, N.W., Suite 800

14 Washington, D.C. 20005-2215

15

16 BY: KEVIN H. BELL, ESQ.

17

18

19 WINDELS MARX LANE & MITTENDORF, LLP

20 Counsel for Bernard L. Madoff Investment Securities, LLC

21 156 West 56th Street

22 New York, NY 10019

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24 BY: HOWARD SIMON, ESQ.

25 ALAN NISSELSON, ESQ.

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P R O C E E D I N G S

MR. SHEEHAN: Good morning, Your Honor.

THE COURT: Good morning.

MR. SHEEHAN: Good to see you. How are you?

THE COURT: I'm fine.

MR. SHEEHAN: Good.

As Your Honor well knows, this is the return date of an application by the Trustee for the approval of fees and allowances for himself, for his firm, and for a number of foreign counsel that he has retained to assist him in the liquidation of the BLMIS. There is, I should note for the record, no objection to any of these applications, but as I have done in the past in reporting to Your Honor a bit on these topics, although I know Your Honor has had the opportunity to review the filings, I would like to just summarize briefly the work that has been performed by each of these firms and why the Trustee supports their application, and also to inform Your Honor as some of the activities that are ongoing in each of these cases, if I may do so.

THE COURT: Please, go forward.

MR. SHEEHAN: All right.

The first application I'm going to talk about is that of Attias & Levy. This is the firm that's been assisting us in Gibraltar. Your Honor actually has some intimate familiarity with that since you through letters to the Gibraltar court have

1 assisted us in ultimately returning the funds here to the
2 depository in this courthouse, and the default judgment that
3 was entered by Your Honor was instrumental in bringing those
4 parties to this courthouse and ultimately that matter will be
5 adjudicated before Your Honor. That firm has spent a good deal
6 of time, 940 hours, working with us on that effort. It has as
7 I pointed out been very successful to date and hopefully we'll
8 reach an ultimately victorious conclusion at the end.

9 The next firm is Eugene Collins, very small number of
10 hours. That's because while the Thema Fund is a very
11 significant fund that we are focusing and investigating, the
12 activities in Ireland which is where the Thema Fund is
13 incorporated have been relatively minor, most of the activity
14 is taking place elsewhere.

15 Graf & Pitkowitz are a Vienna law firm. The work
16 that they do for us principally orbits around the Sonja Kohn
17 matters. Two principal defendants there are Bank Medici and
18 Bank Austria, which are both, of course, in Austria. Recently
19 Judge Rakoff has seen fit to dismiss them from our RICO case.
20 That matter is now on appeal. But there remain many, many
21 other defendants in that RICO action besides those two banks,
22 and we are working closely not only with -- and I think Your
23 Honor will find this interesting -- with our local
24 investigators and with our local counsel, but because of the
25 nature of the criminal proceedings there, Mr. Picard has been

1 designated a victim by virtue of representing the customers
2 here and if criminal authorities can share with us and have
3 shared with us very significant documentation that they've
4 achieved through their own investigations and through testimony
5 that they've taken. We can't participate in the proceedings,
6 but we can share in the information, and we are continuing to
7 do that, and Graf & Pitkowitz were instrumental in making that
8 happen for us.

9 Greenfield Stein is an outfit that we've been using
10 mostly to work with us in preparing affidavits in connection
11 with filing different claims. Their time is minimum as well.

12 Higgs & Johnson is in the Cayman Islands. That's a
13 much more major matter. That is Harley International and
14 Primeo Fund. Both of those funds have liquidators in the
15 Cayman Islands. We appear there, not regularly, but often in
16 connection with our local counsel. There is, as you might
17 surmise, a dispute between the liquidators and ourselves with
18 regard to the assets, and ultimately the beneficiaries of who
19 will receive those assets. So we have actively appeared there
20 in court and Higgs & Johnson is our local counsel that assists
21 us in that effort.

22 Again, a very small matter is Kugler Kandestin. We
23 do have some activities, very minor, in Canada. Occasionally
24 we reach out for them for bankruptcy law. Our principal is in
25 Canada, again it's only a little over four hours.

1 Mishcon de Reya; Mishcon de Reya is an English law
2 firm that was originally retained by the Trustee to be its
3 principal counsel in London in connection with the various
4 litigation that's there. That is the litigation against the
5 directors of MSIL, the Bernie Madoff matter enterprise that was
6 in London. They've also worked with us with regard to the
7 Sonja Kohn freeze order, which I'll speak about in a minute,
8 and a number of other things. What happened along the way,
9 unfortunately, was they developed a conflict, one that they
10 should have seen. Unfortunately as a result of that conflict,
11 it was with Hassans bank that actually -- or Hassans law firm
12 that represents Sonja Kohn. Can't explain how it got missed,
13 but it did. There was a significant negotiation by the Trustee
14 and SIPC with regard to their work on the basis of a quantum
15 meruit analysis because a good deal of the legal research and
16 other work that they had done was utilized by us with Taylor
17 Wessing to advance those lawsuits. We came to a negotiated
18 settlement at that amount, the discount that they've taken is
19 about 35 percent, very significant discount, on top of the 10
20 percent public interest discount. So a total of 45 percent has
21 been dealt with by the Trustee and Trustee and SIPC
22 notwithstanding the fact that we had to replace counsel and the
23 difficulties that were engendered by that are recommending that
24 on that substantially reduced basis the Mishcon de Reya fees be
25 paid.

1 Schitz & Schitz (verbatim) is in Luxemborg -- Schiltz
2 & Schiltz, I should say -- Luxemborg -- mispronounced that. In
3 any event, Luxemborg is an -- how can I put this -- it's a
4 jurisdiction where many transactions as I guess we all surmise
5 by Luxemburg pass through it. None of them ever really stay
6 there. So we've been chasing things through Luxemburg.
7 Schiltz has been very helpful to do that -- helping us with
8 that. It's not an area where we're going to be. The Trustee
9 has been sued there which is the only reason, and it's along
10 with hundreds of other defendants. He's just been named as a
11 nominal filing against him. We have Schiltz monitoring it, but
12 we don't see it as a cause of action, no raising problems for
13 us. We haven't brought it up to Your Honor's attention because
14 we don't think it merits getting Your Honor involved, and if we
15 do, we'll come back and see you on it.

16 Next one is Taylor Wessing. Taylor Wessing has, as
17 you can see, almost 3,000 hours of time. Taylor Wessing is the
18 firm that came on after Mishcon de Reya. Since Mishcon de
19 Reya's defiling of the complaints in December, there have been
20 many applications before the Court in London, some significant
21 findings by the Court with regard to the various causes of
22 action. As Your Honor well knows, we've entered into a
23 cooperation agreement which this court approved between
24 ourselves and Mr. Acres who is the liquidator, appointed, in
25 London with regard to MSIL. That cooperation agreement gives

1 us the opportunity to pursue various claims through his
2 standing by utilizing our law firm, Taylor Wessing. And that
3 has given us the ability to sue all the directors there as well
4 as to sue Ms. Kohn for all the money she received out at MSIL,
5 as well as all the other claims that they have against her. So
6 we have parallel actions against her, both here and in the
7 U.K., and they have been very successful. Probably the most
8 successful thing has been, as I mentioned order, obtaining a
9 freezing order which gives us the ability to freeze her assets
10 worldwide. It's sort of reflective of, I guess, the old order
11 of the British Empire that they can issue worldwide injunctions
12 but they do. And apparently are honored, and we are using that
13 to enforce those throughout Europe at this time.

14 And in addition to that, we've had a great deal of
15 success in terms of getting discovery of the other side through
16 various statements, et cetera. So they have been working with
17 us as I say very hard and over the last year, and I think we've
18 had some really good success. That case will be on for trial
19 about a year from today. So we are actively downgauged in what
20 is limited, pretrial discovery in the U.K. but we're working
21 towards that trial date.

22 UGGC Associates is in France. Again, that is not a
23 jurisdiction where we have any litigation, but there are
24 ongoing criminal investigations and not unlike Austria, we are
25 working cooperatively with the criminal authorities there to --

1 we assist them with information and they in turn assist us with
2 information. It's not on the same formal level as Austria,
3 it's a very informal relationship at this point and it hasn't
4 really generated, quite frankly, a good deal help for us, but
5 we've had some assistance from them. Probably the most
6 interesting one was is that if you'll remember the French
7 authorities released the ASR report that was filed by JPMorgan
8 Chase in October of 2008, noting that they found Bernie to be -
9 - Bernie Madoff to be a fraud, and they were withdrawing their
10 accounts from there. That was released to us, it is now a
11 public document, and we relied upon that in our litigation.

12 Then we have a Swiss law firm, Werder Vigano.
13 They've been helpful to us, again, not a lot of time. As I've
14 said before, Mr. Madoff's empire as it were stretched out
15 throughout Europe. We have to chase it through all those
16 different entities, a good deal of it passed through
17 Switzerland and went out of Switzerland, so we use them for
18 that.

19 The Williams, Barristers are in Bermuda. Bermuda is
20 the central location for Kingate. Kingate is a large fund.
21 One that Your Honor is probably familiar with is the one where
22 they were going to finance their plane, but as a result of
23 certain activities, they were not able to get Deutsche Bank to
24 go forward with their claim. And so as a result there is now
25 litigation between the Kingate liquidators and Deutsche Bank.

1 But we're trying to enforce the funding of their claim. But in
2 the meantime in Bermuda, there's Kingate Management Limited
3 that is the overall holding company that takes care of or held
4 the assets of and were the operational arm of Kingate. Kingate
5 itself, the fund, is a BVI Corporation. We are there as well.
6 We are active in both of those jurisdictions. KML or Kingate
7 Management tried to wind up recently and enter an order giving
8 it the ability to destroy all of its records. We've been
9 actively litigating that. We've stopped that from happening.
10 We have a neutral court-appointed, at this point, receiver in
11 charge of that who is going to maintain those documents and
12 they will be available to us for litigation, and the way this
13 firm has been working with us on all of that.

14 So that in quick summary, Your Honor, is the work
15 that we have been doing in various jurisdictions around the
16 world. The -- we have, of course, other applications here
17 before Your Honor. I'd like to, just if I could, go through
18 those, too, but at this point, on those European applications,
19 I'd like to move at this time for their approval by the Court.

20 THE COURT: Does anyone want to be heard?

21 MR. BELL: Yes, Your Honor. I want to address the -
22 - SIPC has filed a recommendation at Docket 4019 in support of
23 all of the applications, but for the record, I want to talk
24 about the Mishcon one, where there was the substantial
25 discount. And included in that discount, and SIPC was

1 intimately involved in those discussions, was an accounting for
2 the time of the learning curve by the successor law firm,
3 Taylor Wessing, as well as the time for the Baker lawyers that
4 were working on this. So when Mr. Sheehan says there were
5 discussions, there were many discussions and SIPC is
6 recommending the number that is filed with this Court but does
7 support Mr. Sheehan's statement that it is a severe discount
8 and accordingly with regard to all of foreign counsel, SIPC
9 recommends that the applications as filed be approved.

10 Thank you, Your Honor.

11 THE COURT: Does anyone else want to be heard?

12 Well, having heard the description and being well
13 aware of the worldwide activities started off by Bernie Madoff
14 and the sequelae is left for everybody else to follow all the
15 trails and the trails do lead almost everywhere in the world.
16 It is clear under the circumstances that a Herculean effort to
17 follow those trails has been involved both with counsel here in
18 the United States and counsel overseas. And it is clear to the
19 Court that there is nothing really out of line in connection
20 with the applications that are before the Court, and under the
21 statute, the SIPC recommendation is almost a mandate for the
22 Court's approval and it appears that there has been a
23 substantial due diligence with respect to reviewing these
24 applications, and I will approve them.

25 MR. SHEEHAN: Thank you, Your Honor.

1 There are just several other applications I'd like to
2 bring before Your Honor this morning. Of course, two of them
3 are conflicts counsel that we've had; one from almost the
4 beginning is Windels Marx. Mr. Nisselson is here in the
5 courtroom today, so is Howard Simon who works on this case on a
6 daily basis at this point. The activity of those two firms --
7 that firm in this case has been, as I've reported throughout,
8 outstanding. They do great work for the Trustee, they've been
9 involved in significant litigation matters before Your Honor
10 that I know Your Honor is familiar with. They've been not only
11 a great assistance to us in conflict work, but because of the
12 scope and magnitude of the work, they've actually taken on
13 additional work that expands even beyond the conflicts work
14 itself. So they've done an outstanding job with regard to the
15 litigation, the discovery, the monitoring of the litigation,
16 and working with us cooperatively on -- and in particular, the
17 family matters which come up on a fairly regular basis.

18 The other firm, of course, is that given the expanse
19 of the Madoff matter, even when you have a conflict counsel,
20 the conflict counsel can have conflicts. So we have Young
21 Conaway also in the case who has assisted us in matters that
22 Windels has not been able to handle for us involving various
23 banking and other institutions. Their work has been equally
24 good and in fact, beyond, it's been very good, for the Trustee.
25 They've done a very fine job for us, and in both instances the

1 Trustee would recommend that those be approved as well.

2 Last but not least, of course, is the Baker firm,
3 which Your Honor I know also has a lot of familiarity with. I
4 could go through a lot, if you will, background here this
5 morning. I think I'll just if I may, Your Honor, talk about
6 some events over the last couple of months that I think are --
7 the months of this application that I think are important.

8 As Your Honor well knows, there's been a great deal
9 of activity in the District Court. Ever since the withdrawal
10 of the reference in the HSBC matter, and even more importantly,
11 in the Picard Katz matter, there have been numerous motions
12 filed there for withdrawal of the references, as well as then
13 thereafter when the reference is withdrawn, motions to dismiss.
14 Those have involved literally hundreds if not thousands of
15 hours of work 'cause there are now approximately 400 to 500
16 cases that are potentially been withdrawn. Only ten have been
17 withdrawn so far, but the potential is we've now scheduled
18 motions through almost the end of the year with regard to the
19 motion as to withdraw the reference. It's become a totally
20 separate practice from what we had here before Your Honor,
21 dealing almost repetitively with the similar issues of 546
22 Antecedent Debt Stern Marshall and other related matters.

23 As Your Honor well knows, next week on Monday we will
24 start the Katz Wilpon trial. Imbedded in that case are a
25 number of those issues. Irrespective of the outcome, win,

1 lose, or draw, we will be on appeal with regard to all of those
2 as well. So there's been a tremendous amount of preparation
3 for that trial, reflective of the fact that those issues are
4 probably in the forefront in terms of getting those issues
5 reviewed on an appellate level. Needless to say, many, many
6 hours have been spent preparing for that trial and getting it
7 ready. It's been done on a very, very short-term basis, and so
8 while that time isn't really reflected in their application
9 before Your Honor, it has absorbed a good deal of our time
10 since last summer.

11 The other matters that we have before Your Honor, I'd
12 like -- I'm very happy to report that notwithstanding a lot of
13 the other activities I was just alluding to, we still managed
14 to settle a lot of cases, and right now the Trustee has
15 separate and apart from what is on hand at the U.S. Attorney's
16 office has collected well over \$9 billion. Our hope is, is
17 that as Your Honor well knows, there is a surcharge petition on
18 the net equity decision Your Honor rendered and which was
19 affirmed by the Second Circuit now pending in the Supreme
20 Court. We're very confident that that surchiarity (phonetic)
21 will be denied.

22 The Trustee is working very hard to develop a plan
23 where additional, hopefully substantial distribution can take
24 place this summer once that's behind us. We also have the
25 issue of the ERISA claimants which we've now scheduled before

1 Your Honor. We are working on that.

2 We also have, and recently it came up in the Katz
3 Wilpon case the issue of the constant dollar, which is as Your
4 Honor knows, has been raised by the SEC and which was put to
5 the side under net equity field, but which is now back. Judge
6 Rakoff has not indicated whether he's going to take that issue
7 as yet. He's considering it in connection with his ruling in
8 our favor with regard to fictitious profits and whether or not
9 he should consider that. He had initially refused to do so on
10 several motions to withdraw the reference, deeming it an issue
11 that should be decided by the Bankruptcy Court. At this time,
12 however, even though it's on Friday, that he is taking a second
13 look at that, and he may, in fact, take it, I assume.

14 In any event -- so there's been lots of activity
15 orbiting around the motions to withdraw the reference, the
16 motion to dismiss, and Katz Wilpon, but when I talk about all
17 those other cases that are around the world, those go on on a
18 daily basis. Nothing really stops those. We coordinate and
19 direct and are involved in those on a daily basis. There are
20 various teams at Baker that direct those individuals that work
21 with them on a daily basis. Most of the actions we have over
22 there are parallel with actions we've filed here before Your
23 Honor, so in -- and many of those, as Your Honor knows, have
24 not had the motion to withdraw the reference filed. It's a
25 very interesting phenomenon how that occurs, need not get into

1 it here, but the bottom line is is that those cases there if
2 we're going to continue to progress before Your Honor; for
3 example, that is obviously the Madoff family matter, the Mirkin
4 matter, and others, which are here and will continue to be here
5 and which are being actively litigated as I speak. So even
6 though there's a lot of attention drawn to the motions that are
7 before Judge Rakoff, there is a great deal of activity that's
8 occurring, if you will, somewhat behind the scenes in terms of
9 discovery, depositions, document discovery, et cetera.

10 Speaking of document discovery, as I think I've
11 mentioned before to Your Honor, we have 17 terabytes of
12 documents, that is warehouses full of documents. We've managed
13 to bring them into several data rooms; one Your Honor has
14 already approved and are in form. We're still working on the
15 order on data room 2, the issues there are extremely
16 complicated to try to satisfy everyone who may have an interest
17 there, but we're hopeful that that will happen so that third
18 party documents will also be available to counsel.

19 In the meantime, we're doing it on a one-off basis.
20 We have no choice but to do so, so what we're finding is we
21 have fairly significant, literally millions of documents being
22 produced on an individual case basis because we have no other
23 choice until we get that resolved. That requires a great deal
24 of effort on our part to review those documents. Our principal
25 concern is PII, personal identifiable information, as well as

1 anything that might trigger other privacy concerns, so we're
2 very, very careful about, and we have to therefore redact a lot
3 of those documents or provide them in a way that they're
4 secure. So as a result, there's a great deal of effort that's
5 spent on that. We literally have at this point dozens of
6 people reviewing documents because of the vast nature of the
7 document demands that are being served on the Trustee in all of
8 the litigations.

9 So that, in a very general sense, Your Honor, tells
10 you the story of what we've been doing. It's spelled out in
11 greater detail of course in the application, and we do file on
12 a regular basis our Trustee report which does summarize those
13 as well. But based upon all of that effort, Your Honor, and
14 absent any objection, I'll move that the application of Baker
15 and the Trustee also be approved today.

16 THE COURT: Does anyone want to be heard?

17 MR. BELL: Yes, Your Honor.

18 SIPC has filed its recommendation on the Baker
19 application at Docket 4717. Last Wednesday, the Government
20 Accountability Office issued its interim report on liquidation
21 -- on the Madoff's liquidation, and included in that was an
22 extensive review by the GAO of the fees and the applications
23 and the costs of this case. And I'm pleased to report the GAO
24 in their report to Congress, which was the subject of the
25 hearing last Wednesday, said that this case is not out of the

1 ordinary from the usual practice and costs of other cases.

2 It's just larger. And they reviewed our --

3 THE COURT: Sixty-five billion dollars larger.

4 MR. BELL: Yeah, Congressman Garrett has an intimate
5 knowledge of all the facts in this case and continually raises
6 questions which we answer with all speed and depth of
7 information for him. The GAO report is GAO-12-414 and it's
8 available online on the Government's website.

9 The important thing, Your Honor, is that the GAO had
10 many meetings with the Securities Investor Protection
11 Corporation. We provided them our recommendations. We
12 provided them transcripts of the hearings on the fees and Your
13 Honor's statements to them, and in some of them, were even
14 incorporated into the GAO report. And we did a review of one
15 month in what we do in our review of the -- our extensive --
16 SIPC's extensive review of the -- all applications on fees,
17 because SIPC takes its responsibility very seriously that
18 Congress has given us as the Court talks about the mandate
19 section of the statute. And we have done the same with regard
20 to this fee application, and Mr. Sheehan is correct that the
21 motions to withdraw the reference, the MTWR process has created
22 a new wing in the Baker fee applications. On a daily basis, I
23 personally am on the phone with Judge Rakoff's chambers with
24 regard to these, and I do think we are going into next year
25 already with the scheduling based on the ones that are

1 happening and Your Honor's order setting a bar date of April 2
2 will, I think, cause a greater flow of those motions to be
3 filed.

4 The important thing that is here is that this is a
5 large case, but as the SIPC's president testified last
6 Wednesday before Congress, the thing to remember, and the GAO
7 report talks about projection the Trustee has given that he
8 expects that the costs of the liquidation will exceed a billion
9 dollars, a billion point zero nine four, through the end of
10 2014, is that the Trustee has also achieved through remarkable
11 accomplishment of gathering nine point -- approximately \$9.1
12 billion at the current time. And Kingate, as Your Honor knows,
13 is a matter that was almost settled and there's litigation with
14 the claims buyer in the District Court matter between the
15 Kingate liquidators and Deutsche Bank which is public record.

16 And there are a number of other settlements that were
17 on the process on the doorstep of being finalized until we --
18 this MTWR wing of this case started gathering steam. So it is,
19 you know, the last two times that I appeared before the Court,
20 I had hope, I still have hope, it's just going to be a longer
21 term hope, that victims will get satisfied, fully satisfied.
22 One other point that I would raise is that I was on -- and I
23 haven't told Mr. Sheehan this late last -- yesterday afternoon
24 -- I was on the phone call to Judge Rakoff's chambers on
25 constant dollars; the phone call that was raised by one of the

1 parties that already had submitted, and on a motion to dismiss,
2 and that was fully briefed and argued, and was submitted to you
3 today, and they were trying to reopen it as to constant
4 dollars. And Judge Rakoff clarified saying that while he may
5 or may not raise constant dollars in the Katz Wilpon case, it
6 was not prime for briefing. And I did advise the Court that it
7 was my expectation, and Mr. Sheehan has confirmed that, that
8 pursuant to the comments in your opinion in the Second Circuit,
9 that as soon as we get a final, non-appealable order with
10 regard in that equity, and I am hopeful that by June of this
11 year we will be in that position, because the oppositions by
12 the Trustee and SIPC were filed late last week, that we will be
13 bringing a motion on constant dollars so this Court can have
14 the wisdom of all parties and we would look forward to the
15 opportunity to argue that matter before the Court.

16 In conclusion, I just say SIPC supports this
17 application by Baker. It has made an extensive review as you
18 can see in certain paragraphs of the recommendation and its
19 suggestions on reductions have been graciously accepted by the
20 applicants and we would ask the Court to approve of the fees as
21 submitted.

22 Thank you, Your Honor.

23 THE COURT: Does anyone else want to be heard?

24 I note that there's no filed response other than
25 SIPC's. And in the past I've also called everybody's attention

1 to the statute itself, which gives very little choice to the
2 Court unless there is some disruption with the three factors
3 that the Court must consider in the event that there is a non-
4 recommendation by SIPC. But clearly, SIPC is recommending the
5 fees. The Court's discretion, I think in 1978, was taken away
6 in connection with this matter. Nevertheless, I am not here
7 just to listen to a lot of patting -- self-patting on the back,
8 and the Court's not unaware of the enormous amount of fees that
9 are involved here, nor is the Court unaware as to the reason
10 for it, and as to what benefits have accrued based upon the
11 expenditure of so much by way of fees.

12 As I indicated previously, Bernie Madoff has put this
13 matter on the world stage, the tentacles reach all over the
14 world, litigation all over the world, the Trustee's involvement
15 in counsel with realty to the Trustee's involvement is enormous
16 and there is extremely active litigation on the international
17 front and obviously on the domestic front. There is no
18 question about the intensity of the litigation. There is no
19 shortage -- aside from the fact that the three applications
20 before me, I'm not unaware of the fact that there's no shortage
21 of well-financed litigators on the other side of every piece of
22 litigation that's involved with the Trustee. I don't know if
23 anybody is going to Congress to see how much victims and other
24 responsible, responsive parties are spending on their parts to
25 the litigation. I dare say it probably equals or exceeds

1 what's being surfaced before this Court.

2 It is clear that litigators continue to push with the
3 concomitant push back are necessary in complex litigation which
4 results in an amount of fees under the circumstances of this
5 case, and they're not at all surprising. The other thing that
6 is not always to be seen as the case is the question of, did
7 the fees generate something worthy as a result of all of this?
8 Right now, on hold there is some \$9 billion that has come in
9 that is awaiting distribution or not, based upon all of this
10 continued litigation. In this respect, it's unfortunate in our
11 litigious society that the victims are not necessarily going to
12 get to see a major distribution in the immediate future unless
13 this litigation impasse can be resolved. That means to some
14 extent that victims that don't fall in any equal way are being
15 re-victimized. And that's the unfortunate result of what
16 perhaps is a plethora of litigation. It would be better if the
17 parties could accommodate each other to some extent so that
18 this longines of some \$9 billion can be broken to some large
19 extent.

20 With that, it's clear from the Court's observations
21 and remarks that I'm approving the applications that are before
22 me today. And I will entertain an order.

23 MR. SHEEHAN: Thank you, Your Honor.

24 Your Honor, I also -- the Trustee did bring with us
25 the interim report -- I don't know if you'd like a copy of it -

1 - by the GAO and I can hand that up to you as well.

2 THE COURT: Yeah, please.

3 MR. SHEEHAN: Thank you, Your Honor.

4 THE COURT: I've approved the order.

5 MR. SHEEHAN: Thank you, Your Honor.

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7 (Whereupon these proceedings were concluded at 10:34 AM)

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C E R T I F I C A T I O N

I, Anna Maria Leon, certify that the foregoing transcript is a
true and accurate record of the proceedings.

ANNA MARIA LEON

Veritext

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Date: March 15, 2012